

ENCLOSURE 1

Comments of the Indiana Department of Environmental Management on Section V Revisions and Approvability Criteria

Subsection A. SIP Revision Requirements and Schedule

Issue: *EPA is requiring that each State submit the plan by which it will meet the assigned statewide emission budget (including adopted rules needed to meet the emission budget) as a SIP revision within 12 months of the date of final promulgation of this rulemaking.*

Comment: IDEM believes the timeframe EPA is proposing is unreasonable and not achievable given the many required components of a complete and approvable SIP revision submittal. The timeframe proposed by EPA does not allow adequate time to:

- a. compile, review, and analyze current baseline statewide NO_x emission inventories (including growth projections, control assumptions and existing control requirements);
- b. review OTAG modeling for accuracy and conduct local modeling;
- c. research the list and description, potential emissions reductions, and cost-effectiveness of control measures necessary to meet the statewide emissions budget; and
- d. fully adopt and implement state rules and conduct public hearings on the SIP revision plan.

The fact that states have been participating in OTAG does not make the twelve month timeframe achievable. With the exception of the Ozone Transport Commission states, which had begun the regulatory process for utility controls even before OTAG was formed, no other state subject to the SIP call has begun rulemaking. Nor can they, until the final level of NO_x control is determined. In Indiana, the state rulemaking process takes from twelve to eighteen months to complete.

The twelve month timeframe is shorter than either of the submittal periods established in the Clean Air Act; Section 110 (k)(5) allow states up to eighteen months, and Section 110 (a)(1) allows states up to 3 years. IDEM recommends a more realistic and achievable timeframe would be at least eighteen months from the date of final promulgation of this rule.

Issue: *US EPA acknowledges that States may need additional detailed guidance on how to develop effective transport SIPs, and plans to establish a workgroup to determine and provide information and guidance that will be helpful.*

Comment: IDEM agrees that additional guidance and information will be necessary. However, if the SIP revision is due within twelve months from the date of final promulgation of this rule,

guidance must be issued very soon. IDEM urges US EPA to convene the proposed workgroup expeditiously and, whether or not a workgroup is formed, involve States and other interested parties broadly in developing guidance.

Subsection B. SIP Approval Criteria

Issue: *US EPA is seeking comment on which control strategy implementation date (2002 or 2004) is appropriate, in light of the feasibility of implementing controls and the need to provide air quality benefits as expeditiously as possible.*

Comment: Given the magnitude of likely reductions, the number of facilities that will likely need to install controls, the length of time necessary for rulemaking, engineering and installing control devices, IDEM believes that 2002 is for all practical purposes unachievable. IDEM will provide further comment on this issue in its supplemental comments submitted later this spring, after we have developed additional information. In the supplemental comments to be submitted this spring, IDEM will also comment on whether the 2004 timeframe suggested by US EPA as an alternative, is more achievable. There may be merit, however, in a phased implementation approach, similar to that required by the Acid Rain program. Earlier compliance deadlines could be established for NO_x sources that contribute most to either local or regional ozone.

Issue: *US EPA is encouraging that requests for alterations to the growth estimates or control assumptions used in calculations of the budgets be made during this comment period so that budgets established in the final rule will include the changes.*

Comment: IDEM has been working steadily to improve its emissions inventory. As indicated in Enclosure *, (proposed inventory corrections), and the information supplied on behalf of IDEM by the Lake Michigan Air Directors Consortium (LADCO), IDEM has identified numerous errors in US EPA's inventory, including assumptions about growth and control measure effectiveness. While IDEM appreciates US EPA's need to move forward with modeling this spring (which necessitates shutting off further changes to the inventory), IDEM will be submitting supplemental comments later this spring, with any additional corrections to the baseline and projected 2007 inventories. It is IDEM's understanding that US EPA will accept additional inventory comments, even after March 9, and factor those into Indiana's ultimate budget.

Issue: *US EPA is requesting comment on how SIPs and the associated process can allow for the incorporation of cost-effective, end-use energy efficiency projects.*

Comment: Indiana has been participating in US EPA's workgroup on energy efficiency, through IDEM and the Department of Commerce's Energy Office. We fully support the inclusion of these types of projects as creditable SIP measures. Development of specific guidance for creditable projects and the actual implementation of any energy efficiency projects will likely take longer than the twelve month timeframe allowed for SIP submittal.

Subsection C. Review of Compliance

Issue: *To periodically assess the progress of a State's regional control strategy, US EPA is proposing to publish a supplemental notice of proposed rulemaking in early 1998, requiring States to establish a program to track its progress. US EPA will again be establishing a workgroup to determine what procedures to put in place to provide assurances the emissions reductions are being achieved. US EPA is soliciting comment on what types of compliance assurance procedures may be necessary.*

Comment: Although IDEM agrees that tracking the progress of emissions reductions proposed in the regional NOx strategy should be included in this type of program, IDEM does not believe the CAA gives the US EPA the authority to require statewide periodic emissions inventories for attainment areas. States should be able to use the periodic emissions checks to make mid-course corrections. US EPA should provide guidance on how states deal with issues such as emission factor updates, etc. Also, there appear to be several issues that will need to be addressed, such as:

- a) The additional resource burden on states and facilities required to report. IDEM urges US EPA to consolidate any newly required periodic reporting with existing reporting requirements, especially considering that States do not require emission statements from small sources in attainment areas.
- b) The frequency of reporting and due dates,
- c) Will the progress tracking plan be required to be included in the SIP?
- d) US EPA and States should work together to collect information and then determine how to use this information to make mid- course adjustments to achieve reduction goals in time for States to include a tracking program in their SIP submittal?

Subsection D. 2007 Reassessment of Transport

Issue: *US EPA intends to conduct a new study, in 2007, to reassess ozone transport and evaluate the effectiveness of the regional NOx measures States have implemented in response to this rulemaking action.*

Comment: Conducting a study to reassess ozone transport and the effectiveness of the regional NOx measures States implemented is basically a good idea. However, IDEM believes that the study should be conducted earlier so that upwind areas can have information from findings available before the 2007 attainment date.

Subsection E. Sanctions

Issue: *a) Section 179 specifies the order in which sanctions will apply in cases of a State's noncompliance with requirements of part D. The regulations do not address the impositions of sanctions in the case of a State's failure to comply with a SIP call under section 110(k) or a SIP revision under section 110 (a).*

b) According to Section 179, the highway funding sanction applies in designated nonattainment areas and the offset sanction applies in areas with part D NSR programs. US

EPA is proposing to use Section 110(m) to allow them the authority to apply the highway funding sanction (discretionary sanctions) on a statewide basis. US EPA is requesting comment on whether the discretionary sanctions should be used in response to a failure of a State to submit the required SIP revision.

Comment: IDEM recognizes that the Clean Air Act gives EPA the authority to impose sanctions in certain circumstances. However, IDEM believes the severity of the time frames proposed by US EPA would seriously undermine the State's effort to implement a rulemaking of this magnitude in the short timeframe it has. It is IDEM's belief, the majority, if not all, of the states affected by this rulemaking, will do their utmost to comply with the proposed SIP revision, in a form that is complete and approvable, as possible. To impose sanctions that will hamper a state's economy and will serve no useful purpose; especially since it is US EPA's intention to publish a proposed FIP at the time of final promulgation of this rulemaking.

Subsection F. Federal Implementation Plans (FIPs)

Issue: *EPA is requesting comment on the proposed timeframe for implementing a FIP.*

Comment: US EPA's proposed timetable for FIP proposal and issuance is inappropriate. The Clean Air Act gives states the primary responsibility for developing and implementing clean air programs for their citizens with federal action as a last resort, when even the imposition of sanctions has failed to compel state action. For US EPA to say on the one hand that it is up to the states to design their own control program, but on the other that they only have twelve months to do it and that US EPA will propose a FIP with its preferred program of NOx controls at the end of that twelve month period is inconsistent with the approach of the Clean Air Act and unnecessary.

Subsection G. Other Consequences

Issues: *US EPA will consider issuing a subsequent SIP call for a State to revise its implementation strategy if it is implementing all of its control measures, but is not expected to meet its 2007 NOx budget due to errors in growth estimates or control assumptions.*

Comment: There is no mention of a time line for when these determinations would be made. A state should have an opportunity to amend its implementation strategy, if it believes it will not meet the required NOx budget by 2007. Also, a determination should be made early enough to allow sufficient time to make corrections by the 2007 compliance date. There may be cases where failure to meet the budget is not the state's fault, e.g., federal measures are delayed. States should not be required to implement their plans in this circumstance; either the state's budget should be increased or US EPA should be held to making up those credits.